

MONTANA LEGISLATIVE HISTORY

Chapter 132 19 91

Bill H _____ S 131 Original bill & history C

H. Committee on Business & Economic De-

Hearing Date(s) Mar 11 ✓ C

_____ C

_____ C

_____ C

Date Out Mar 11 ✓ C

S. Committee on Business & Industry

Hearing Date(s) Jan 24 ✓ C

Feb 21 ✓ C

_____ C

_____ C

Feb 22 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

2/14	FIRST READING		
2/14	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	91	5
3/12	3RD READING CONCURRED	92	5
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/18	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 131		

EFFECTIVE DATE: 7/01/91

SB 131 INTRODUCED BY FRITZ, ET AL

PROVIDE FOR TRANSFER OF DOMICILE BY
FOREIGN AND DOMESTIC INSURERS

1/17	INTRODUCED		
1/18	REFERRED TO BUSINESS & INDUSTRY		
1/18	FIRST READING		
1/24	HEARING		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	49	0
2/25	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT		
3/11	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED		
3/11	PLACED ON CONSENT CALENDAR		
3/14	3RD READING CONCURRED	98	2
	RETURNED TO SENATE		
3/18	SIGNED BY PRESIDENT		
3/19	SIGNED BY SPEAKER		
3/19	TRANSMITTED TO GOVERNOR		
3/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 132		

EFFECTIVE DATE: 3/20/91

SB 132 INTRODUCED BY TVEIT, ET AL

ALLOWING TOWING OF THREE VEHICLES ATTACHED
BY TRIPLE SADDLE-MOUNT
BY REQUEST OF DEPARTMENT OF HIGHWAYS

1/17	INTRODUCED		
1/18	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/18	FIRST READING		
1/24	HEARING		
1/24	COMMITTEE REPORT—BILL PASSED		
1/25	2ND READING PASSED	49	0
1/26	3RD READING PASSED	46	0
	TRANSMITTED TO HOUSE		
1/26	FIRST READING		
1/26	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/13	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	59	32
	RETURNED TO SENATE		
3/19	3RD READING CONCURRED	64	33
4/03	SIGNED BY PRESIDENT		
4/03	SIGNED BY SPEAKER		
4/04	TRANSMITTED TO GOVERNOR		
4/04	SIGNED BY GOVERNOR		

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on January 24, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor:

Senator Harry Fritz, sponsor of the bill, stated that SB 131 is a vehicle which will allow small insurance companies that are created in other states and tailored to individual and specialized risks to relocate in Montana. The proponents will propose an amendment that will allow these captive insurance companies to begin operations in Montana. It would allow small companies existing elsewhere to relocate here, and specialized insurance companies to start up in Montana.

Proponents' Testimony:

Robert Minto, an attorney in Missoula and also the president of attorneys liability protection society (ALPS), spoke in favor of the bill. He has a special interest in this piece of legislation because Jim Borchardt and himself just went through a

very interesting process of trying to figure out how to bring this type of business into Montana. With the cooperation and the help of the department they were able to do that. Montana has a reputation of not being a place that's a good place to do business. As an insurer, he tells us this is not the case. We have a very cooperative department, a very well educated work force, and a work force that has an extremely high work ethic. He has traveled around the country for the past five years organizing this particular company, and has discovered that Montana has a lot more to offer in the insurance area than we are letting the world know about. We are the best kept secret in the country. The bill was originally designed to allow small companies to come into Montana, which is exactly what ALPS did that is to bring businesses out side the state in. When he originally asked Senator Fritz to introduce the original bill, he had the misconception that a lot of these companies were mutual and stock companies. It became clear to him that many of these are known as captives. A captive is an association sponsored company that is owned by the insurers. Insurers for example, ALPS is a mutual company that could be a captive, but it's authority from the department would insure lawyers against legal malpractice. The people that it would insure would be only members of the association that sponsored it. The original bill, while still beneficial to the state of Montana, was somewhat deficient in that we did not have the ability to attract these captive companies. He sees this as an opportunity for Montana to go out and bring in some business that does not pollute, provides quality high paying jobs, and puts something to show the public that Montana is not a bad place to do business. He has researched the various captive laws in Montana, there are about twelve of them.

Dave Barnhill, deputy commissioner of insurance, spoke in favor of the bill. This bill is patterned after the national association of insurance commissioners and is intended for use in all states. The state auditor and commissioner of insurance supports the redomestication statute here in Montana, because it has the possibility of promoting new companies and businesses in this state. ALPS has domesticated to Montana, but had this bill been law at that time it would have expedited the process. With respect to the amendment that relates to captive insurers, as Mr. Minto pointed out they have not had an opportunity to review that in substance. The amendment was just received this morning. They are willing to work with the committee to make sure the captive amendment would conform with the other insurance laws in Montana.

Jacqueline Terrell, representing the American insurance association, stated that she is not to speak either in support or in opposition of this bill. She requested that the committee have a rehearing on the bill. It has been substantially amended this morning from the bill as it was originally introduced. Her client would like the opportunity to review the bill, and perhaps support it but at least know what is involved.

Gene Phillips, representing the national association of independent insurers, and the alliance of the american insurers, stated that they would also like the opportunity to review the

bill.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Lynch stated that we will in fact reschedule a hearing, and he will speak with the president to make sure that it is printed in its new form.

Senator Thayer asked if they put the amendment with the Illinois language in this bill, is this substantially the same bill that he carried in the last session that got killed in this committee.

Dave Barnhill deferred to Mr. Borchardt.

Jim Borchardt, chief examiner of the Montana insurance department, stated that he did not attend the meeting last year, or in the last session in regards to SB 248. In a large measure it is substantially the same. The minimum capital and surplus standards is unclear that were in SB 248. He has not had an opportunity to see if they are the same or different.

Senator Thayer stated that the bill has a lot of sex appeal because it has a possibility of bringing jobs into Montana. Unless you meet the industry standards you can also leave a lot of people uninsured in the process.

Senator Lynch suggested that Bart Campbell get a copy of last sessions SB 248 so that they can be compared.

Senator Thayer asked why all of the language and the amendment discussed, and why wasn't the bill substantially put in the same form as it was in the last session rather than bringing in a three page bill with an eighteen page amendment.

Senator Fritz replied that he wasn't aware that this had been a matter discussed in the previous legislature. In response to Senator Thayer's previous question, Senator Fritz asked Mr. Minto to respond.

Mr. Minto stated that the responsibility for not having the amendment was his and not Senator Fritz's. When he originally introduced it, he did not feel that it was a necessary component to get the redomestication part of the bill. He looked into the industry he was trying to attract to Montana and it became clear that a captive component to the bill was needed. That occurred after the original bill was submitted to legislative council for drafting. He was also unaware that there were similar bills in the last session.

Senator Thayer stated that he asked the question to clarify what Mr. Minto had testified earlier, saying that he had worked with the state auditor's department. Senator Thayer went on to say that he was surprised that the information from the previous bill didn't come up.

Mr. Minto stated that he worked with the state auditor's department to bring his company to Montana. They have just become involved.

Closing by Sponsor:

Senator Fritz stated that there was a page on the way with

copies of the captive amendment. The proponent's, the department, and himself have absolutely no opposition to working together a full bill, and whether the committee demands a rehearing or a executive session they can all be present when that occurs.

Senator Lynch verified that there would be a rehearing, because it is very difficult for people involved to be able to respond to something that they really don't know what is in the bill. This is an unusual situation, because it is not a mere amendment, it is rather substantial.

Senator Thayer asked if they could put it in draft form so they could see what the real bill would look like.

Bart Campbell stated that in this situation he could do that.

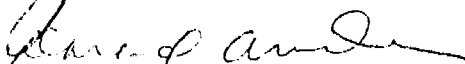
Senator Lynch stated that the committee didn't need the copy of the amendments. He would rather just see the end result. He went on the say that Mr. Minto should visit with Bart Campbell.

ADJOURNMENT

Adjournment At: 10:25 a.m.



J.D. LYNCH, Chairman



DARA ANDERSON, Secretary

JDL/dia

JAN. 24, 1991

COMMITTEE ON BUSINESS & INDUSTRY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Dave Barnhill	Insurance department	131	✓	
James W. Bachard	" "	131		
ROBERT W. MINTO JR.	ALPS	131	✓	


**ATTORNEYS
LIABILITY PROTECTION
SOCIETY, INC.**
A Risk Retention Group

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A MULTI-STATE BAR RELATED
 PROFESSIONAL LIABILITY INSURANCE COMPANY

(Please leave prepared statement with Secretary)

ROLL CALL

Business&Industry COMMITTEE

DATE 1/24/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
Senator Bruski	✓		
Senator Franklin	✓		
Senator Gage	✓		
Senator Hager	✓		
Senator Noble	✓		
Senator Thayer	✓		
Senator Williams	✓		
Senator Kennedy	✓		
Senator Lynch	✓		

Each day attach to minutes.

Harrison, Loendorf & Poston, P. C.
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FAX NO. (406) 443-7427
* MEMBER OF WASHINGTON BAR

January 21, 1991

TO: The Honorable Del Gage
Montana State Senator

FROM: James T. Harrison, Jr. 

RE: Request for Committee Bill for Peer Review in
Certified Public Accounting and Public Accounting
to Provide Confidentiality and Non-Liability

This request for proposed legislation results from a national increase in litigation against all professionals, and specifically in the area of accountancy. There are two distinct problems which result when peer reviews are conducted of professionals, and those reviews are maintained as records:

1. There are discovery requests made relative to finding and evaluating the peer review reports by parties engaged in suit against a particular professional. If these peer review reports are to be made available to litigants, the next step is the subpoenaing of persons engaged in the peer review and their records to appear as witnesses against the particular professional. This has two adverse results: First, the peer reviewer knowing his report and record may become public, is thereby encouraged to be less than candid, and to otherwise be placed in apprehension that he, himself, may end up as a public witness in condemnation of another professional, and/or may as a result of that action be subject to a later suit by the reviewed professional.

2. Secondly, and in addition to the possibility of the individual, the information contained in the proceedings and records of the professional peer review or ethics review committee may be separately available, and obviously this purpose is far beyond the reason or justification for peer review.

In summary, it is submitted that these professionals should have peer review proceedings and ethical review proceedings available for the protection of their professional membership and standards without fear that those same procedures will be turned upon the members in a non-relevant matter to the detriment of the entire profession. This proposal follows the Montana statutory guidelines set forth in peer review for medical professionals. A copy of the medical statute is attached hereto, being section 37-2-201, MCA.

Part 2

Nonliability for Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care information, Title 50, ch. 16.

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

Compiler's Comments

1989 Amendment: In four places inserted reference to medical ethics review.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Medical legal panel created, 27-6-104.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By Chairman J.D. Lynch, on February 21, 1991, at 5:00 p.m.

ROLL CALL

Members Present:

J.D. Lynch, Chairman (D)
John Jr. Kennedy, Vice Chairman (D)
Betty Bruski (D)
Eve Franklin (D)
Delwyn Gage (R)
Thomas Hager (R)
Jerry Noble (R)
Gene Thayer (R)
Bob Williams (D)

Members Excused: None

Staff Present: Bart Campbell (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: None

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor:

Senator Harry Fritz, sponsor of the bill, thanked Senator Lynch for allowing him a rehearing on this bill. This bill would allow insurance companies from other states to transfer or relocate in Montana.

Proponents' Testimony:

Robert Minto, an attorney in Missoula and also the president of attorneys liability protection society (ALPS), stated that the bill was reworded to meet all of the right criteria. The purpose of the bill for small boutique type insurance companies to relocate to the state of Montana. Montana is a good place for insurance companies to exist. He had Senator Fritz introduce the first original bill, and subsequent to that time discovered that the bulk of the companies that he was trying to target were created under captive laws in another jurisdiction. The result,

because Montana didn't have a captive law to create a captive environment in order to facilitate the original purpose of the bill. Although the amendment is rather lengthy, this bill as it's presently written tracks very closely with Senator Thayer's bill of last session with some major changes with regard to capitalization to meet some concerns that the companies be adequately capitalized. He stands here as a citizen of the state of Montana with no particular vested interest in this bill except to say that he believes in Montana's economic entity and he believes Montana ought to try and attract these kinds of businesses, and that is the purpose for this bill.

Opponents' Testimony:

Jacqueline Terrell, representing the American insurance association, stated that the American insurance association supports those provisions of the bill as they were originally introduced. Those portions of the bill that relate to captive insurers, they oppose. They oppose not the concept that only to the extent that captive insurers are not regulated in the same way that other insurance companies are regulated in Montana. Their primary concern is with the insolvency of the insurers, the captive insurers. When a property casualty company becomes insolvent, there is a guaranteed fund to protect the claimant against that company. No is no similar provisions in this bill to protect those claimants against the captive insurer in the event of insolvency. She stated that she believes the amendment as it deals with captive insurers is outside of the scope of the purpose of the bill. She asked the committee to at least give the captive insurer portion of the bill a do not pass.

Questions From Committee Members:

Senator Thayer asked about the difference in this bill compared to the bill that he carried two years ago regarding minimum capital and minimum surplus.

Robert Minto replied that this bill basically tracks within fifty thousand dollars one way or the other. The minimum surplus and capital requirements are mutual for stock companies, except for the case of pure captive. The same definitions that Senator Thayer used before a pure captive is where a company creates an insurance company to insure its own interests. Association captive is where the bar association for example, creates a captive to insure the others.

Susan Witte, chief legal council, state auditor's office, stated that she has the section by section analysis from last years bill.

Senator Thayer asked if they increased this substantially.

Susan Witte replied that each category has been increased by about fifty thousand dollars.

Senator Lynch stated that maybe the committee should pass the bill as it was originally introduced.

Senator Fritz stated if that is the will of the committee, and at this late date that may be the thing to do. That would

undercut some of the opposition of the bill which is not to the original bill, but to the amended bill. The original bill, without the amendments would do the job. The amendment could wait until next session and come back with a clean bill on that subject.

Senator Noble asked what the original purpose was of the bill.

Senator Lynch stated that the original bill's purpose was to bring in new insurers that are now listed as foreign insurers to make them domestic insurers. This goes further and gets into some captive.

Senator Thayer asked in the original bill would they be part of the assigned risk pool.

Robert Minto stated that the original bill will only deal with stock companies that are mutual to their part of the assigned risk pool guarantee fund. That is the difference between the two. They will still be able to use this bill. They will still be able to attract insurers, they are just not going to be able to track as many of the smaller companies as they might be able to with the amended. If the committee doesn't pass the amendment then the only thing that it will cover is stocks and mutuals.

Closing by Sponsor:

Senator Fritz closed.

EXECUTIVE ACTION ON SENATE BILL 232

Motion:

Senator Thayer moved the amendments proposed do pass.

Senator Noble moved to do pass SB 232 as amended.

Senator Noble moved to do not pass SB 232 as amended.

Discussion:

Senator Lynch stated that SB 232 deals with the surrendering of the certificate of ownership. They have had some talk about seventy five dollars is a little harsh to inspect a two hundred dollar vehicle.

Senator Gage stated that the title appears to be the big problem in this area. If somebody could come up with language that says that the junk dealers stamp those things or the insurance companies stamp those things with something that says for a junk vehicle, or something to identify the vehicle.

Peter Funk stated that there are a couple of problems with that. One being, more vehicle titles are secure documents which are produced and designed so that except for their execution. If you have the holders of the titles making those types of changes on them, it really flies in the face of the entire nationwide titling system. They have discussed an option where all of the employees and the costs that are involved with the bill comes on

Senator Thayer moved to do pass SB 169.

Discussion:

Senator Thayer asked if SB 232 and SB 169 were companion bills. Would this bill still be beneficial to the department.

Peter Funk replied that it would still be beneficial, this bill embodies the other ideas from the task force that are not late to the issuance of the salvage certificates or the VIN inspection. This bill would accomplish some considerable amount even without the other one.

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion that SB 169 do pass passed unanimously.

EXECUTIVE ACTION ON SENATE BILL 131

Motion:

Senator Noble moved that SB 131 be amended to have an immediate date and a retroactive date.

Senator Noble moved that SB 131 do pass as amended.

Discussion:

Senator Lynch stated that he feels the committee should pass the bill in its first form, it didn't have any opposition. If they want to come back in two years that should be a bill of itself. He feels there should be an amendment on an effective date retroactive.

Amendments, Discussion, and Votes:

Senator Gage stated that his notes recall that the opponents were opposed do to the extensive proposed amendment.

Senator Lynch stated that the opponents are gone now, because the committee didn't put in the extensive amendments.

Recommendation and Vote:

The motion to amend SB 131 passed unanimously.

The motion that SB 131 do pass as amended passed by 8 to 1 votes.

Amendments to Senate Bill No. 131
First Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
February 12, 1991

1. Title, line 4.

Following: "ACT"

Insert: "ADOPTING LAWS TO REGULATE MONTANA CAPTIVE INSURERS;"

2. Title, line 7.

Strike: "AND"

3. Title, line 9.

Following: "DOMICILE"

Insert: "; AND AMENDING SECTION 33-2-708, MCA"

4. Page 1, line 14.

Strike: "3"

Insert: "23"

5. Page 1, line 16.

Strike: "1"

Insert: "21"

Strike: "2"

Insert: "22"

6. Page 1.

Following: line 19

Insert: "NEW SECTION. Section 1. Short title. [Sections 1 through 19] may be cited as the "Montana Captive Insurers Act".

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 19], the following definitions apply:

(1) "Affiliated company" means a company that, by virtue of common ownership, control, operation, or management, is the same corporate system as a parent company, an industrial insured, or a member organization.

(2) "Association" means a legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least 1 year and whose members collectively:

(a) own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurer that is incorporated as a stock insurer; or

(b) have complete voting control over an association captive insurer that is incorporated as a mutual insurer.

(3) "Association captive insurer" means a company that insures risks of the member organizations of the association and their affiliated companies.

(4) "Captive insurer" means a pure captive insurer, association captive insurer, or industrial insured captive insurer formed or authorized under [sections 1 through 19].

(5) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state law, insurance in excess of a specified per-incident or aggregate limit.

(6) "Industrial insured" means an insured:

(a) who procures the insurance of a risk by using the services of a full-time employee acting as an insurance manager or buyer;

(b) whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(c) who has at least 25 full-time employees.

(7) "Industrial insured captive insurer" means a company that insures risks of the industrial insureds that comprise the industrial insured group and the group's affiliated companies.

(8) "Industrial insured group" means either:

(a) a group of industrial insureds that collectively:

(i) own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer that is incorporated as a stock insurer; or

(ii) have complete voting control over an industrial insured captive insurer that is incorporated as a mutual insurer; or

(b) a group that is created under the Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901), as amended, as a corporation or other limited liability association taxable as a stock insurer or a mutual insurer under Montana law.

(9) "Member organization" means an individual, corporation, partnership, or association that belongs to an association.

(10) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50% of the outstanding voting securities of a pure captive insurer.

(11) "Pure captive insurer" means a company that insures risks of its parent and affiliated companies.

NEW SECTION. Section 3. **Certificate of authority -- procedure.** (1) A captive insurer, when permitted by its articles of incorporation or charter, may apply to the commissioner for a certificate of authority to transact the kinds of insurance defined in 33-1-206(1)(a), (1)(b), and (1)(d) through (1)(n), 33-1-209, 33-1-210, and 33-1-211, except that:

(a) a pure captive insurer may not insure a risk other than that of its parent and affiliated companies;

(b) an association captive insurer may not insure a risk other than that of the member organizations of its association and their affiliated companies;

(c) an industrial insured captive insurer may not insure a risk other than that of the industrial insureds that comprise the industrial insured group and the group's affiliated companies;

(d) a captive insurer may not provide personal motor vehicle or homeowner's insurance coverage or any component thereof;

(e) a captive insurer may not accept or cede reinsurance except as provided in [section 12]; and

(f) a captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies

unless prohibited by the laws of the state having jurisdiction over the transaction.

(2) A captive insurer may not transact any insurance business in this state unless:

(a) it first obtains from the commissioner a certificate of authority authorizing it to transact insurance business in this state;

(b) its board of directors holds at least one meeting each year in this state;

(c) it maintains its principal place of business in this state; and

(d) it appoints a resident registered agent to accept service of process and to otherwise act on its behalf in this state. If the registered agent cannot with reasonable diligence be found at the registered office of the captive insurer, the secretary of state is the agent of the captive insurer upon whom any process, notice, or demand may be served.

(3) Before receiving a certificate of authority, each applicant captive insurer shall file with the commissioner:

(a) a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(b) evidence of the following:

(i) the amount and liquidity of its assets relative to the risks to be assumed;

(ii) the adequacy of the expertise, experience, and character of each person who will manage it;

(iii) the overall soundness of its plan of operation;

(iv) the adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds, as applicable; and

(v) other factors considered relevant by the commissioner in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.

(4) Each captive insurer shall pay to the commissioner a nonrefundable fee as provided in 33-2-708 for the examination and investigation and the processing of its application for a certificate of authority. In addition, it shall pay a fee as provided in 33-2-708 for annual continuation of a certificate of authority. The commissioner may retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged to the applicant.

(5) If the commissioner is satisfied that the documents and statements filed by the captive insurer comply with [sections 1 through 19], he may grant a certificate of authority authorizing it to transact insurance business in this state. A certificate of authority issued under [sections 1 through 19] continues in force until suspended, revoked, or otherwise terminated. The certificate of authority must be continued by the captive insurer each year by payment before March 1 of the renewal fee required in 33-2-708.

NEW SECTION. Section 4. Name of captive insurer. A captive insurer may not adopt a name that is the same as, deceptively similar to, or likely to be confused with or mistaken for any

other existing business name registered in the state of Montana.

NEW SECTION. Section 5. Minimum capital. The commissioner may not issue a certificate of authority to a pure captive insurer, an association captive insurer that is incorporated as a stock insurer, or an industrial insured captive insurer that is incorporated as a stock insurer unless it possesses and maintains unimpaired, paid-in capital of \$400,000.

NEW SECTION. Section 6. Minimum surplus. The commissioner may not issue a certificate of authority to a captive insurer unless it possesses and maintains free surplus of:

(1) in the case of a pure captive insurer, not less than \$150,000;

(2) in the case of an association captive insurer that is incorporated as a stock insurer, not less than \$350,000;

(3) in the case of an industrial insured captive insurer that is incorporated as a stock insurer, not less than \$300,000;

(4) in the case of an association captive insurer that is incorporated as a mutual insurer, not less than \$750,000; or

(5) in the case of an industrial insured captive insurer that is incorporated as a mutual insurer, not less than \$500,000.

NEW SECTION. Section 7. Formation of captive insurer in this state. (1) A pure captive insurer must be incorporated in this state as a stock insurer as defined in 33-3-102.

(2) An association captive insurer or an industrial insured captive insurer may be incorporated in this state:

(a) as a stock insurer as defined in 33-3-102; or

(b) as a mutual insurer as defined in 33-3-102.

(3) A captive insurer may not have less than three incorporators, of whom not less than two must be residents of this state.

(4) Before the articles of incorporation are transmitted to the secretary of state, the incorporators shall petition the commissioner to issue a certificate setting forth his finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. To determine whether the corporation will promote the general good of the state, the commissioner shall consider:

(a) the character, reputation, financial standing, and purposes of the incorporators;

(b) the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(c) other aspects the commissioner considers advisable.

(5) The incorporators shall transmit to the secretary of state the articles of incorporation and the certificate described in subsection (4). The secretary of state shall record the articles of incorporation and the certificate.

(6) The capital stock of a captive insurer incorporated as a stock insurer must be issued at not less than par value.

(7) A least one of the members of the board of directors of a captive insurer incorporated in this state must be a resident

of this state.

(8) A captive insurer formed under [sections 1 through 19] has the privileges of and is subject to Title 35 and the applicable provisions of [sections 1 through 19]. If a provision of Title 35 conflicts with a provision of [sections 1 through 19], [sections 1 through 19] control.

NEW SECTION. Section 8. Annual statement. Prior to March 1 of each year, each captive insurer transacting insurance business in this state shall submit to the commissioner a statement of its financial condition, verified by oath of two of its executive officers. Each association captive insurer shall file its statement in the form required by 33-2-701. The commissioner shall by rule propose the form in which a pure captive insurer and an industrial insured captive insurer submit a statement of financial condition.

NEW SECTION. Section 9. Examinations -- costs. (1) Except as provided in subsection (2), the commissioner shall, not less than once every 3 years and whenever he considers it advisable, visit each authorized captive insurer and thoroughly inspect and examine its affairs, transactions, accounts, records, and assets to ascertain its financial condition, its ability to fulfill its obligations, and its compliance with [sections 1 through 19].

(2) If the captive insurer is subject to a comprehensive annual audit by independent auditors approved by the commissioner, the commissioner may, in his discretion and upon application by a captive insurer, increase the 3-year period described in subsection (1) to 5 years.

(3) The examined captive insurer shall pay the costs of the examination. The commissioner shall pay to the credit of the general fund all money received by him for an examination or investigation conducted under this section.

NEW SECTION. Section 10. Grounds and procedures for suspension or revocation of certificate of authority. (1) The commissioner may suspend or revoke the certificate of authority of a captive insurer to transact insurance in this state for any of the following reasons:

- (a) insolvency or impairment of capital or surplus;
- (b) failure to meet the requirements of [section 5 or 6];
- (c) refusal or failure to submit an annual statement, as required by [section 8], or any other report required by law or by order of the commissioner;

- (d) failure to comply with the provisions of [sections 1 through 19] or its own articles of incorporation, charter, or bylaws;

- (e) failure to submit to examination, as required by [section 9], or any related legal obligation;

- (f) refusal or failure to pay the costs of examination as required by [section 9];

- (g) use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental to or its condition unsound with respect to the public or its policyholders; or

- (h) failure to comply with any other laws of this state.

(2) If, upon examination, hearing, or other evidence, the commissioner finds that a captive insurer has committed any of

the acts specified in subsection (1), he may, notwithstanding any other provision of this code, suspend or revoke the certificate of authority if he finds it in the best interest of the public and the policyholders of the captive insurer.

NEW SECTION. Section 11. Legal investments. (1) An association captive insurer shall comply with the investment requirements contained in Title 33, chapter 2, part 8.

(2) A pure captive insurer or industrial insured captive insurer is not subject to any restrictions on allowable investments, including those limitations contained in chapter 2, part 8, except that the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of such an insurer.

NEW SECTION. Section 12. Reinsurance. (1) A captive insurer may provide reinsurance on risks ceded by any other insurer.

(2) A captive insurer may take credit for reserves on risks or portions of risks ceded to reinsurers that have complied with 33-2-1205. A captive insurer must receive the prior approval of the commissioner before it may cede risks to or take credit for reserves on risks or portions of risks ceded to reinsurers that have not complied with 33-2-1205.

(3) In addition to credit for reinsurance allowed under 33-2-1205, a captive insurer may take credit for reserves on risks or portions of risks ceded to a pool, exchange, or association acting as a reinsurer that has been authorized by the commissioner. The commissioner may require any documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that, in his judgment, are necessary and proper to provide adequate security for the ceding captive insurer and for the protection and benefit of the public.

NEW SECTION. Section 13. Rating organizations -- membership. A captive insurer may not be required to join a rating organization.

NEW SECTION. Section 14. Exemption from compulsory association. A captive insurer may not join or contribute financially to a plan, pool, association, or guaranty or insolvency fund in this state. A captive insurer, its insured, its parent or any affiliated company, or any member organization of its association may not receive a benefit from any plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of the captive insurer.

NEW SECTION. Section 15. Tax on premiums collected. (1) A captive insurer organized under the provisions of this chapter and doing business in this state shall pay to the commissioner the state tax imposed under chapter 2, part 7, to the same extent and in the same manner as a domestic insurance company.

(2) Domestic captive insurers are subject to the rules adopted under the Montana income tax laws.

(3) The taxes referred to in this section constitute all taxes collectible under the laws of this state from a captive

insurer. No occupation tax or other taxes may be levied or collected from a captive insurer by the state or by a county, city, or municipality within this state, except ad valorem taxes on real and personal property used in the production of income.

NEW SECTION. Section 16. Rules. The commissioner may adopt rules relating to captive insurers as are necessary to carry out the provisions of [sections 1 through 19].

NEW SECTION. Section 17. Other provisions applicable. (1) Except as provided in subsection (2), the provisions of this code do not apply to a captive insurer.

(2) The following chapters, parts, and sections of this code apply to captive insurers to the extent the provisions are applicable and not in conflict with [sections 1 through 19]: chapter 1; 33-2-701; 33-2-708; chapter 2, part 8; 33-2-1205; chapter 11; and [sections 1 through 19].

NEW SECTION. Section 18. Penalties. A captive insurer that violates or causes or induces a violation of [sections 1 through 19] or a rule implementing a provision of [sections 1 through 19] is subject to a penalty as provided in 33-1-317.

NEW SECTION. Section 19. Subordinated indebtedness. (1) A captive insurer organized under this chapter may borrow or assume a liability for the repayment of a sum of money upon a written agreement for the loan or advance, with interest at a rate not exceeding the prime rate as reported in the Wall Street Journal on the first business day of the month plus 3% a year. The rate must be fixed on the execution of the loan and may apply only for the term of the loan. The loan and interest must be repaid only out of surplus of the captive insurer in excess of the minimum surplus established in the loan agreement.

(2) The loan agreement must be approved first by a majority of the board of directors of the captive insurer and by the commissioner. Repayment of the principal or interest may be made only if the commissioner is satisfied that the financial condition of the captive insurer warrants the repayment.

(3) A loan or advance, together with the accrued interest, may not constitute part of the legal liabilities of the captive insurer until the commissioner approves repayment of the debt. Until the commissioner authorizes repayment of the debt, all financial statements published by the captive insurer must, at the captive insurer's election, show the debt as a special surplus or capital account.

(4) Nothing in this section may be construed to mean that a company may not otherwise borrow money so long as the amount borrowed is carried by the company as a liability.

Section 20. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of

authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

- (A) domestic insurers \$ 600.00
- (B) foreign insurers 600.00
- (C) captive insurers 600.00
- (ii) annual continuation of certificate of authority 600.00
- (iii) reinstatement of certificate of authority 25.00
- (iv) amendment of certificate of authority 50.00
- (b) articles of incorporation:
 - (i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00
 - (ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00
 - (c) filing bylaws or amendment to bylaws where required 10.00
 - (d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00
 - (e) insurance producer's license:
 - (i) application for original license, including issuance of license, if issued 15.00
 - (ii) appointment of insurance producer, each insurer 10.00
 - (iii) temporary license 15.00
 - (iv) amendment of license (excluding additions to license) or reissuance of master license 15.00
 - (f) nonresident insurance producer's license:
 - (i) application for original license, including issuance of license, if issued 100.00
 - (ii) appointment of insurance producer, each insurer 10.00
 - (iii) annual renewal of license 10.00
 - (iv) amendment of license (excluding additions to license) or reissuance of master license 10.00
 - (g) examination for license as insurance producer, each examination 15.00
 - (h) surplus lines insurance producer license:
 - (i) application for original license and for issuance of license, if issued 50.00
 - (ii) annual renewal of license 50.00
 - (i) adjuster's license:
 - (i) application for original license and for issuance of license, if issued 15.00
 - (ii) annual renewal of license 15.00
 - (j) insurance vending machine license, each machine, each year 10.00

(k) commissioner's certificate under seal (except when on certificates of authority or licenses) 10.00

(l) copies of documents on file in the commissioner's office, per page50

(m) policy forms:

(i) filing each policy form 25.00

(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

(n) applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by him pursuant to Title 33 and the rules adopted under Title 33.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of \$10 will be refunded."

Renumber: subsequent sections

7. Page 3, line 13.

Strike: "1"

Insert: "21"

Strike: "2"

Insert: "22"

8. Page 3, line 14.

Following: "instruction"

Insert: "(1) [Sections 1 through 19] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 19].

(2)"

9. Page 3, lines 15 and 17.

Strike: "1 through 3"

Insert: "21 through 23"

10. Page 3.

Following: line 17

Insert: "NEW SECTION. Section 25. {standard} Saving clause.

[This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 26. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains

in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 1. {standard} Retroactive applicability. The effective date of [sections 21 through 23] is January 1, 1991."

ROLL CALL VOTE

SENATE COMMITTEE B&I

Date 2/21/91 Bill No. SB131 Time 5 PM

NAME	YES	NO
WILLIAMS	X	
THAYER	X	
NOBLE		X
HAGER	X	
GAGE	X	
FRANKLIN	X	
BRUSKI	X	
KENNEDY	X	
LYNCH	X	

D Anderson
Secretary

JD LYNCH
Chairman

Motion: Do PASS AS AMENDED

ROLL CALL VOTE

SENATE COMMITTEE

B&I

Date

2/21/91

Bill No.

SB131

Time

5:00

NAME

YES

NO

NAME	YES	NO
WILLIAMS	✓	
THAYER	✓	
NOBLE	✓	
HAGER	✓	
GAGE	✓	
FRANKLIN	✓	
BRUSKI	✓	
KENNEDY	✓	
LYNCH	✓	

D. ANDERSON

Secretary

JD LYNCH

Chairman

Motion:

TO AMEND IMMEDIATE EFFECTIVE

DATE

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 22, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 131 (first reading copy -- white), respectfully report that Senate Bill No. 131 be amended and as so amended do pass:

1. Title, line 7.

Following: ";"

Strike: "AND"

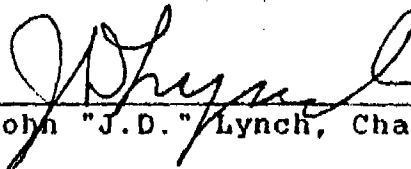
2. Title, line 9.

Following: "DOMICILE"

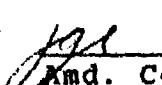
Insert: "; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
RETROACTIVE APPLICABILITY DATE"

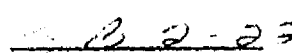
3. Page 3, line 18.

Insert: "NEW SECTION. Section 5. Effective date -- retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

Signed, 

John "J.D." Lynch, Chairman

 2-22-91
Amd. Coord.

 2-22-91 9:40
Sec. of Senate

410923EC.Sji

bars? Cairo Newcomer said they are not effective in controlling this kind of case or location. It wasn't an effective remedy for his client. The thing to do was to protest the license which was initially denied and then things went awry.

Closing by Sponsor:

SEN. HALLIGAN said you can't take away that first license. The people want the bar not to be there. The State has jurisdiction over liquor laws. The problem with the nuisance law is that the County Attorney is going to negotiate and the license is not ever going to be taken away. They try to work with the tavern owners to balance out their needs. SB 206 would reduce the cost to applicants, not only new applicants, but for transfers and would clean up the process at the same time.

HEARING ON SENATE BILL 131

Presentation and Opening Statement by Sponsor:

SEN. HARRY FRITZ, SD 28, Missoula, MT., explained SB 131 makes it easier for an insurance company to relocate into the State of Montana. Also it makes it easy for it to leave the State of Montana. It is an Act providing a means for a foreign insurer to become a domestic insurer; providing a means for a domestic insurer to transfer its domicile to another state; providing for the continuation of a certificate of authority and other approvals pertaining to an insurer transferring its domicile; and providing an immediate effective date and a retroactive applicability date.

We are talking mainly about small insurance companies, so-called boutique or designer specialty insurance companies. They would have to conform to the current laws of Montana. I do have a proponent who will explain the necessity for the bill.

Proponents' Testimony:

Robert A. Nineto, Jr., Attorney, and Chief Executive Officer for ALPS, a small insurance company that insures lawyers against legal malpractice. It is relatively high risk. We started working on the project a number of years ago and originally domesticated that company to the State of Nevada due to the fact that Montana required us to go through a common law procedure. This bill very simply is designed as an economic development issue. Small insurance companies are cropping up all over the country. Small mutuals are designed to deal with a particular liability of property issues. There is a particularly good environment here in Montana in the insurance department because you can have one on one kind of contact. If you have a question about what is going on, you can talk to the person who is going to be making the decisions. We have the opportunity to attract some already existing companies and this will make that easy. January 1, 1991,

would be the retroactive effective date. As an industry they would like to be able to set an example and attract other similar companies to Montana.

Susan Witte, Chief Counsel for the State Auditor, Insurance Department, said The State Auditor supports SB 131. It is based on a national association of insurance commissioners' model. She believes it may help bring new insurance into the State of Montana.

Jacqueline Terrell, American Insurance Association, supports SB 131. It is a good business bill and should attract the insurance industry to Montana, which should bring a better economic climate to Montana. She hoped it would be passed.

Opponents' Testimony: None

Questions from the Committee:

Closing by Sponsor:

SEN. FRITZ remarked the only risk I see is that the place will be overrun by insurance agents. We can put up with that. Thank you very much.

EXECUTIVE ACTION ON SENATE BILL 131

Motion: REP. PAVLOVICH moved SB 131 BE CONCURRED IN.

Discussion: REP. HANSON assumed the only reason we are making this retroactive to January 1, 1991 is because they want a full fiscal year. Susan Witte said the retroactive date was submitted by Bob Nineto; the reason for this is ALPS became redomesticated in Montana on January 1, 1991, through the Secretary of State's retroactive date. It is O.K. in the insurance code.

Vote: Motion SB 131 BE CONCURRED IN passed unanimously. SB 131 will be put on the Consent Calendar. REP. HOWARD TOOLE will carry the motion in the House.

EXECUTIVE ACTION ON HOUSE BILL 861

Motion: REP. JOHN SCOTT moved HB 861 DO PASS.

Discussion:

REP. WALLIN said there is a serious problem with the bill - there is no means of funding. HB 861 only provides for the construction and hopes the local communities will take over the operation. REP. SWYSGOOD stated the bill is not intended to take care of the cost of operation. It is intended to retire the bonds necessary for construction. Those are things that have to be worked out in

ROLL CALL

DATE March 11, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 11, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 131 (third reading copy - blue) be concurred in and be placed on consent calendar.

Signed: _____
Bob Bachini, Chairman

**HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER**

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

BILL NO. SB 131

DATE MARCH 11, 1991 **SPONSOR(S)** SEN. H. FRITZ

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jacqueline N. Terrell	Am. Insurance Assoc.	✓	
Sharon C. Wilke	State Auditor / Dept. of Insurance	✓	
Art A. Mink Jr.	ALPS	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.